



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER M-235**

**Appeal M-9300087**

**City of Elliot Lake**



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# ORDER

## BACKGROUND:

The City of Elliot Lake (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for the identities of individuals who had responded to a "questionnaire seeking individuals who would be interested in lot development on Spine Road". More specifically, the request stated: "Whether `letters' or a list, or simply copies of the questionnaires, I am seeking to learn who, in fact, answered what [the Economic Development Corporation of the City] is calling a `market survey'".

The City responded to the request by indicating to the requester that copies of the completed questionnaires could be released, subject to the severance of the names, addresses and telephone numbers of the individual respondents under section 14(1) of the Act. The requester appealed the denial of access.

During the course of mediation, the appellant claimed that, based on some materials received from the City, there should be 20 completed questionnaires responsive to the request, instead of the 18 identified by the City.

Mediation was not successful and notice that an inquiry was being conducted to review the decision of the City was sent to the appellant, the City and the individuals named in the records (the affected persons). Representations were received from the appellant, the City, and some of the affected persons.

The records at issue in this appeal are those portions of the questionnaires which contain the names and addresses and, in some instances, telephone numbers of the individuals who filled out the questionnaires. These questionnaires are forms entitled "Cottage Lots and Residential Building Lots for Sale?" and were printed in a local newspaper. They state, in part:

The [EDC] needs your help to identify the potential local demand for cottage lots and/or executive style residential building lots in Elliot Lake.

If you or someone you know is interested in purchasing this type of property in Elliot Lake, please mark an (X) in the appropriate box.

...

Yes, I am interested in purchasing a executive-style residential lot on Spine Road.

Please include your name and address (optional) and forward your response to: [the Economic Development Office]

## ISSUES:

The issues in this appeal are:

- A. Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.
- C. Whether the City conducted a reasonable search for responsive records.

### **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.**

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, ...

The records at issue in this appeal consist of the names, addresses and, in some instances, telephone numbers of individuals who indicated an interest in buying real estate. In my view, this information falls under the above-mentioned definition of personal information and relates solely to the affected persons.

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.**

Under Issue A, I found that the records contain the personal information of the affected persons.

Section 14(1) of the Act prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in certain circumstances listed under this section. The City has referred to section 14(1)(f) of the Act as applicable to the records. That section reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Because section 14(1)(f) of the Act is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

In determining whether section 14(1)(f) applies, consideration should be given to sections 14(2) and (3) of the Act, which provide guidance in determining whether or not disclosure of personal information would constitute an unjustified invasion of personal privacy, and section 14(4), which lists a number of specific types of information the disclosure of which does not constitute an unjustified invasion of personal privacy.

Having reviewed the records carefully, I find that none of the information at issue falls under the ambit of sections 14(3) or (4) of the Act.

Section 14(2) of the Act provides a non-exhaustive list of criteria to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.

The appellant claims that the factor in section 14(2)(a) of the Act is relevant in the circumstances of this appeal. This section states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

The appellant states that the issue of building on the properties has been the focus of "intense public debate", and it is the appellant's view that this supports the position that the names of the respondents should be disclosed. The appellant submits that the responses to the questionnaires are the sole basis upon which the City has defended its intention to allow development on the properties, and that the public has a right to examine this "research".

In order for section 14(2)(a) of the Act to be considered as a relevant consideration, it must be established that the disclosure of the information at issue is desirable for the purpose of subjecting the activities of the institution to public scrutiny. Having reviewed the contents of the records and the circumstances under which they were created, as well as the representations of the parties, it is my view that disclosure of the identities of the affected persons is not desirable for the purpose of subjecting the activities of the City to public scrutiny. Therefore, section 14(2)(a) is not a relevant consideration in the circumstances of this appeal.

The appellant also submits that representatives of the City had originally indicated that the names of the affected persons would be released, but that the City subsequently refused to release the records. With respect to this issue, I am satisfied that in the circumstances of this appeal this is not a relevant consideration.

The provisions of section 14 of the Act are mandatory, and the City is prohibited from disclosing personal information to individuals other than those to whom the information relates, unless it finds that such disclosure would not constitute an unjustified invasion of the personal privacy of the individuals. This mandatory provision applies notwithstanding statements or promises which may have been made by representatives of the City to disclose the personal information.

The appellant has not raised any other factors under section 14(2) of the Act which favour the disclosure of the information at issue and I find none that are relevant.

Both the City and the affected persons have made representations and have raised factors under section 14(2) of the Act which favour non-disclosure of the personal information. I have reviewed these representations carefully, and having found that there are no factors that favour the disclosure of personal information, in my view, the exception under section 14(1)(f) to the mandatory rule of non-disclosure is not applicable in the circumstances of this appeal. Accordingly, I find that the records are exempt under section 14 of the Act.

In his representations, the appellant also referred to the provisions of section 16 of the Act. This section reads:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

Much of the appellant's submissions on the public interest in the disclosure of the records relate to the issue of whether particular individuals filled out the surveys, which I have dealt with in addressing the application of section 14(2)(a).

It has been stated in a number of previous orders that, in order to satisfy the requirements of this section, there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption (Orders 24, 163 and 183). In the circumstances of this appeal, I am not convinced that there is a compelling public interest sufficient to outweigh the purpose of the exemption under section 14, and it is my view that section 16 of the Act does not apply in the circumstances of this appeal.

The appellant also submits that section 7(2)(g) of the Act applies. This sections reads as follows:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

a report containing the results of field research undertaken before the formulation of a policy proposal;

In my view, section 7(2) of the Act has no relevance to the issues raised in this appeal. Section 7(2) is an exception to the discretionary exemption found in section 7(1), and specifies that it applies to preclude an institution from claiming the section 7(1) exemption in certain situations. As the City in this appeal has not relied upon the section 7(1) exemption, section 7(2) has no application in this appeal.

**ISSUE C: Whether the City conducted a reasonable search for responsive records.**

The appellant believes that there are 20 completed questionnaires responsive to the request, instead of the 18 records identified by the City. The appellant provided information in which the City, prior to the time of the request for the records, appears to identify that there were 20 completed forms received.

The City was notified of the issue regarding the apparent discrepancy in the number of records responsive to the request. The City was asked to describe the nature of the searches undertaken to identify the records.

The City has made submissions regarding the existence of additional records and has provided an affidavit sworn by the Director of the Economic Development Office for the City (the Director) in which the Director describes the manner in which the survey response forms were received and stored. The relevant portion of her affidavit reads as follows:

4. By October 15, 1992, 17 responses regarding executive style residential building lots had been received by and filed with the [Economic Development Office]. On October 15, 1992, I reviewed the completed surveys regarding executive style residential building lots. By report dated October 15, 1992 (the "Report"), and received by City Council on October 19, 1992, I advised City Council, on behalf of the Chairman of the Economic Development Council, of the number of completed surveys received by the EDO. The Report was released to the public at City Council's meeting on October 19, ...
5. A misunderstanding developed as a result of the Report. At page 2 of the Report, under the paragraph entitled "Analysis", on behalf of the Chairman, I advised City Council that, "Seventeen (17) local residents expressed interest in purchasing an executive building lot on Spine Road and three (3) responses were received from individuals who currently reside outside of Elliot Lake." By the above quote, I verily believe that, through the Report,  
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and on behalf of the Chairman, I intended to advise City Council that the EDO had received a total of 17 completed surveys, some of which were completed by non-residents of the City.

...

9. By the second week of November, 1992, the EDO had received one further completed survey regarding executive style residential building lots, making the total 18.

The affidavit goes on to identify the safeguards that were maintained by the Director to ensure the confidentiality of the respondents to the survey.

Having carefully reviewed the representations, I am satisfied that the City has taken all reasonable steps to locate any records responsive to the appellant's request.

**ORDER:**

I uphold the decision of the City.

Original signed by: \_\_\_\_\_  
Asfaw Seife  
Inquiry Officer

\_\_\_\_\_ December 7, 1993